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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ISAIAH WILLIE WOODS,

Defendant and Appellant.

THE PEOPLE,

Plaintiff and Respondent,

v.

VERNON JAHAD DWIGHT HILL,

Defendant and Appellant.

2d Crim. No. B278005
(consolidated with B283793)
(Super. Ct. No. 2015022583)
(Ventura County)

Isaiah Willie Woods and Vernon Jahad Dwight Hill appeal following a court trial in which they were both convicted of

robbery (Pen. Code,[1] § 211) and commercial burglary over $950 (§ 459). The trial court sentenced each of them to five years and eight months in state prison. Appellants contend the judgments against them must be must be reversed because the record does not affirmatively reflect that they knowingly, voluntarily, and intelligently waived their right to a jury trial. We agree and reverse.

STATEMENT OF FACTS

On July 2, 2015, Woods, Hill, and two accomplices entered a clothing store, collected 20 to 30 items of clothing with a combined retail value of $4,000 to $5,000, and brought them to the purchase counter. After an employee explained the store's policy limiting transactions to 15 items, Woods shouted "run," grabbed some of the clothing, and ran out of the store. Hill and the two accomplices grabbed the remaining clothing and also ran out of the store.

An employee from a nearby store saw appellants and their accomplices leave in a sedan and took down the license plate number. It was subsequently determined that Woods had rented the car two days earlier in Seattle, Washington. Appellants and their accomplices were also identified through video surveillance evidence obtained from the store where the crimes were committed.

On July 5, 2015, appellants and one of their former accomplices entered another store, grabbed several iPads, and left the store without paying for them. While taking the iPads, appellants and their accomplice pushed a store employee out of

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[1] All statutory references are to the Penal Code unless otherwise stated.

their way. A witness to the crime identified appellants from photographic lineups.

DISCUSSION

Appellants contend the judgments against them must be reversed because the record does not affirmatively show that they knowingly, voluntarily, and intelligently waived their right to a jury trial. This contention has merit.

The right to trial by jury in criminal cases is guaranteed by the Sixth Amendment of the United States Constitution and article I, section 16 of the California Constitution. (*Duncan v. Louisiana* (1968) 391 U.S. 145, 149; *People v. Ernst* (1994) 8 Cal.4th 441, 444-445.) This right is considered "fundamental to the American scheme of justice" (*Duncan*, at p. 149), and the denial of the right is a structural error that requires the judgment be set aside (*Ernst*, at pp. 448-449; *People v. Cahill* (1993) 5 Cal.4th 478, 501).

A defendant can expressly waive his or her right to trial by jury. (Cal. Const., art. I, § 16; *People v. Sivongxxay* (2017) 3 Cal.5th 151, 166 (*Sivongxxay*).) To be valid, the waiver must be "knowing and intelligent, [i.e.], ""made with a full awareness both of the nature of the right being abandoned and the consequences of the decision to abandon it,"" as well as voluntary ""in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception."""" (*People v. Collins* (2001) 26 Cal.4th 297, 305.) Whether a jury waiver is valid depends upon the totality of the circumstances. (*Sivongxxay*, at pp. 166-167.) Our Supreme Court has made clear, however, that a waiver cannot be upheld unless the record """"*affirmatively* shows that it is voluntary and intelligent under the totality of the circumstances."""" (*People v. Daniels* (2017) 3 Cal.5th 961, 991

(*Daniels*) (lead opn. of Cuéllar, J.); see also *id.* at p. 1018 (conc. & dis. opn. of Corrigan, J.).)

Appellants were each represented at trial by separate appointed counsel. At a Thursday pretrial hearing, Hill's attorney informed the court "[w]e've had some discussion with regards to a court trial, but I think both Mr. Woods and Mr. Hill want to think about that over the weekend." At the next court session the following Monday, the court stated, "I understand from counsel that both sides are going to waive a jury; is that right?" After appellants' attorneys both answered the affirmative, Woods interjected, "I want to go pro per."

The court then addressed Hill as follows: "You understand that you have a right to have the jury decide the issues in this case including a verdict, if any. And it is your intention to waive and give up your right to a jury trial and agree that the Court, that being me, hear all the evidence and make decisions about what, if anything, happened?" Hill responded, "Yes, your Honor."

The court proceeded to tell Woods "you too have a right to have the issues in this case determined by a jury, and I understand that it is your intention to waive and give up your right to have a jury decide the issues and agree that this Court, me, can decide what, if anything, happened in this case. Do you understand that?" Woods responded, "Yes, your Honor, but there was an issue I wanted to bring up." The court stated, "Okay. Well, let me just ask you about the jury. Do you give up your right to a jury trial?" Woods responded, "Yes." The prosecutor went on to state that "the People will waive jury based on both Mr. Woods and Mr. Hill waiving jury." The court proceeded to deny Woods' request to represent himself because he was not ready to start trial and a continuance was not warranted.

We agree with appellants that the record fails to affirmatively show that their jury trial waivers were knowing, voluntary and intelligent under the totality of the circumstances. Two cases are particularly instructive.

People v. Blancett (2017) 15 Cal.App.5th 1200 (*Blancett*), involved a jury trial waiver at a mentally disordered offender (MDO) commitment hearing. Counsel for the defendant (Blancett) told the court "'[w]e'd like to set it for a court trial.'" (*Id.* at p. 1203.) The trial court asked Blancett if he was "'okay with having a judge decide your case and not a jury'" and Blancett replied, "'Yes, your honor.'" (*Ibid.*)

In reversing, we concluded that Blancett "did not waive his right to a jury trial with full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it." (*Blancett*, *supra*, 15 Cal.App.5th at p. 1206.) The trial court did not advise Blancett of his right to a jury trial or "explain the significant attributes or mechanics of a jury trial. [Citation.] Neither did the court inquire whether Blancett had sufficient opportunity to discuss the decision with his attorney, whether his attorney explained the differences between a bench trial and a jury trial, or whether Blancett had any questions about the waiver." (*Ibid.*) We further noted that "the record does not suggest that Blancett was familiar with MDO proceedings or that he was aware that he was entitled to a jury trial. Although he pleaded guilty to two counts of child molestation two years prior to the MDO hearing, we have no record of the advisements he received before entering that plea." (*Ibid.*) We went on to conclude that "[i]n view of the trial court's stark colloquy, the lack of evidence that Blancett discussed his jury trial right and waiver with counsel, Blancett's inexperience with the criminal justice

system, and Blancett's lack of familiarity with MDO proceedings, . . . his waiver was not knowing and intelligent." (*Id.* at pp. 1206-1207, citations omitted.)

In *People v. Jones* (2018) 26 Cal.App.5th 420 (*Jones*), the defendant (Jones) was asked if she understood her right to a jury trial and if she agreed to waive that right and have the trial judge "'sitting alone, decide the case.'" (*Id.* at p. 428.) Although it could be inferred that Jones also had some discussion with her attorney regarding a jury waiver, "the record [did] not show whether Jones's attorney ever discussed with her the nature of a jury trial, including for example, that the jury would be comprised of 12 of her peers from the community." (*Id.* at p. 435.)

In reversing the judgment, the Court of Appeal concluded that the "sparse record" did not affirmatively show that Jones's jury waiver was voluntary and intelligent under the totality of the circumstances. (*Jones*, *supra*, 26 Cal.App.5th at p. 435.) The court reasoned that "[t]here is no showing from this record that Jones understood the nature of the right to a jury trial she was relinquishing. While the Supreme Court in *Sivongxxay* made clear there is no precise formulation for a valid jury waiver advisement, the [C]ourt recommended that the trial court advise the defendant that in a trial by jury, the jury is comprised of 12 members of the community, the defendant through his or her attorney may participate in jury selection, 12 jurors must unanimously agree to render a verdict, and in a court trial, the judge alone will decide the defendant's guilt or innocence. [Citation.] Of this list, the trial court here only advised Jones that it alone would decide whether Jones was guilty or innocent." (*Id.* at p. 436.)

The court in *Jones* went on to conclude that "[b]ecause the trial court did not advise Jones as to the specific rights she would be giving up or inquire if her attorney explained those rights to her, her bare acknowledgment that she understood her right to a jury trial was inadequate." (*Jones*, *supra*, 26 Cal.App.5th at p. 436.) The court also noted that "unlike the defendants in *Sivongxxay* and *Daniels*, who had previously waived their rights in connection with guilty pleas [citations], Jones had no experience with the criminal justice system. Neither the information nor the probation report reveals a prior criminal charge." (*Id.* at pp. 436-437.)

Here, we are presented with a similarly stark colloquy and sparse record. The trial court merely told appellants they had a right to have a jury "decide the issues" and asked whether they agreed to waive that right and allow the trial judge to decide the case. As in *Jones*, "the trial court here only advised [appellants] that it alone would decide whether [they were] guilty or innocent." (*Jones*, *supra*, 26 Cal.App.5th at p. 436.) Although Hill's attorney stated there had been "some discussion" about proceeding with a court trial, "the record does not show whether [appellants'] attorney[s] ever discussed with [them] the nature of a jury trial, including for example, that the jury would be comprised of 12 of [their] peers from the community." (*Jones*, *supra*, 26 Cal.App.5th at p. 435.)

Moreover, nothing else in the record supports a finding that appellants "waive[d] [their] right to a jury trial with full awareness of the nature of the right being abandoned and the consequences of the decision to abandon it." (*Blancett*, *supra*, 15 Cal.App.5th at p. 1206.) Although evidence of a defendant's prior experiences with the criminal justice system can help

demonstrate that a jury trial waiver was knowing, voluntary and intelligent (see *Sivongxxay*, *supra*, 3 Cal.5th at p. 167), the evidence of appellants' prior criminal histories offers no such support here. They each have numerous prior juvenile adjudications, but none of those proceedings involved the right to a jury trial. Their probation reports also reflect that they each have a recent conviction for burglary, but there is no indication whether those convictions were the result of guilty pleas or whether appellants were otherwise fully advised of their right to a jury trial in those proceedings.

Because the record does not affirmatively show that appellants' jury trial waivers were knowing, voluntary and intelligent under the totality of the circumstances, their convictions must be reversed. (*Daniels*, *supra*, 3 Cal.5th at p. 991; *Blancett*, *supra*, 15 Cal.App.5th at pp. 1206-1207; *Jones*, *supra*, 26 Cal.App.5th at p. 437.)

DISPOSITION

The judgments are reversed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

TANGEMAN, J.

Jeffrey Bennett, Judge
Superior Court County of Ventura

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